



W.P(MD)No.917 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.917 of 2021

and

W.M.P.(MD)Nos.14435 and 14436 of 2022

G.Anbalagan

... Petitioner

Vs.

1.The Director General of Police,
Mylapore, Chennai – 4.

2.The Additional Director General of Police,
(Law and Order),
Mylapore, Chennai – 4.

3.The Commissioner of Police,
Trichy City, Trichy.

4.The Deputy Commissioner of Police,
(Law and Order),
Trichy City, Trichy.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in connection with the impugned order passed in his proceedings in CPO. No.674/2020 dated 23.10.2020 and the consequential impugned order passed in his proceedings Na.Ka.No.K3/19523/2020 dated 02.12.2020 and quash the both as illegal and



WP(MD)No.917 of 2021

arbitrary and consequently direct the respondents to treat the interregnum period of out of employment spent by the Petitioner as duty period for all purposes thereby to give promotion with full pay and allowances by regularizing the Petitioner's salary on par with his batch mates in pursuant to the order passed in WP(MD)No.765 of 2005 dated 03.09.2010 within time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.J.K.Jayaseelan,
Government Advocate.

ORDER

Heard the learned counsel on either side.

2.The basic facts are not in dispute. The writ petitioner joined service as Grade II Police Constable in the year 1993. He was issued with charge memo on 31.12.2002. On 04.12.2003, he was dismissed from service. Questioning the dismissal order, the petitioner preferred appeal. The appeal was also dismissed. Thereafter, the petitioner filed review petition before the Additional Director of General of Police (Law & Order), Chennai - 4. Vide order dated 12.06.2004, the reviewing authority modified the punishment to reduction in time scale of pay by two stages for one year and that the period of reduction will not operate to postpone the future increments. Whiles, the Director



W.P(MD)No.917 of 2021

General of Police, Chennai – 4 vide order dated 07.10.2004 *suo motu* reviewed the order and restored the punishment of dismissal. Challenging the same, the petitioner filed W.P.(MD)No.765 of 2005 before this Court. Vide order dated 03.09.2010, the order restoring the punishment of dismissal was set aside and the writ petition was allowed. Unfortunately, the order passed by this Court was not complied with immediately nor an appeal was filed in time. Instead after a long gap, the department filed writ appeal. It was dismissed at the SR stage itself by the Hon'ble Division Bench on 24.09.2018. The Hon'ble Division Bench held that the delay has not been properly explained. The petitioner was reinstated in service only on 25.03.2019.

3.The petitioner sought regularization of the intervening period. In response thereto, the third respondent have passed the impugned order regularizing the period in the following manner:-

t.vz;	tpLg;g[fhyk;	ehl;fs;	neh; bra;a[k; tPjk;
01	30.09.2022 Kjy; 15.01.2003 tiu	108 ehl;fs;	UEL ½ Pay (PA)
02	06.12.2003 Kjy; 15.02.2004 tiu 16.02.2004 Kjy; 20.07.2004 tiu	72 ehl;fs; 155 ehl;fs;	UEL ½ Pay (PA) LWP (PA)
03	21.10.2004 Kjy; 24.03.2019 tiu	5265 ehl;fs;	LWP (PA)

Challenging the same, the present writ petition has been filed.



W.P(MD)No.917 of 2021

WEB COPY

4.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

5.The respondent have filed a detailed counter affidavit and the learned Government Advocate took me through its contents. The learned Government Advocate would draw my attention to the letter written by the writ petitioner and submitted that the regularization order is in consonance with the petitioner's own request. He, therefore, contended that the writ petition is not maintainable.

6.I carefully considered the rival contentions and went through the materials on record. Even before commencing his submissions, the learned counsel for the petitioner on instructions fairly stated that he would be satisfied if the entire period is treated as on duty for all purposes and he would confine his prayer for monetary relief to the period from 03.09.2010 till date of reinstatement.

7.The petitioner cannot be blamed for the non-employment for the period from 03.09.2010. The department had only two courses open to it. It could



W.P(MD)No.917 of 2021

have complied with the order immediately or it could have questioned the order before Hon'ble Division Bench. It did neither. The writ appeal was filed after a long delay. It was listed for admission with a greater delay. An order dated 03.09.2010 passed by the learned Single Judge came up for challenge only 29.04.2018. Therefore, the department is obliged to pay the full salary payable to the writ petitioner for this period.

8.I must deal with the contention advanced by the learned Government Advocate that the impugned regularization order is in consonance with the petitioner's request letter. The petitioner is holding the rank of Grade II Police Stable. He has been battling the department right from the year 2004 onwards. He was dismissed from service vide order 07.10.2004. Even though he succeeded in the writ petition, he was not still given any employment. In these circumstances, the petitioner would obviously have signed on the dotted lines. He had virtually no choice. Therefore, the circumstances under which he had executed the letter dated 15.10.2020 will have to be borne in mind by this Court. That cannot operate as estoppel. For the fault of the department, the petitioner cannot be blamed. The impugned order is set aside. While the period of suspension and the period upto 07.10.2004 can be adjusted as against the petitioner's eligible leave, the period from 07.10.2004 till date will have to be



W.P(MD)No.917 of 2021

treated as on duty. The respondents are also directed to pay the petitioner's salary arrears for the period from 03.09.2010 till date of reinstatement. The petitioner's promotion and seniority will be reckoned appropriately. The disbursement of monetary benefits as well as passing of an appropriate order regarding the petitioner's promotion and seniority will be made within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

16.11.2022

Index : Yes / No
Internet : Yes/ No
ias

To:-

- 1.The Director General of Police,
Mylapore, Chennai – 4.
- 2.The Additional Director General of Police,
(Law and Order),
Mylapore, Chennai – 4.
- 3.The Commissioner of Police,
Trichy City, Trichy.
- 4.The Deputy Commissioner of Police,
(Law and Order),
Trichy City, Trichy.



WEB COPY



W.P(MD)No.917 of 2021



WEB COPY



W.P(MD)No.917 of 2021

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.917 of 2021

16.11.2022
(2/2)